



30 Bank Street
PO Box 350
New Britain
CT 06050-0350
06051 for 30 Bank Street
P: (860) 223-4400
F: (860) 223-4488

**Connecticut Bar Association
Elder Law Section
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In OPPOSITION to SB104

**AN ACT ESTABLISHING A CAUSE OF ACTION FOR NURSING HOME FACILITIES
AGAINST RECIPIENTS OF TRANSFERS OF ASSETS**

LEGAL FLAWS

This bill has many legal flaws. The bill attempts to create an irrebuttable presumption that there is a creditor-debtor relationship between a nursing home and the recipient of any gift (the transfer) that causes a period of ineligibility (a penalty period). The bill further attempts to create a contract between the nursing home and the recipient of a gift without any consideration.

The irrebuttable presumption alone should make this illegal. In the cases where the recipient of the gift had nothing to do with the application for Medicaid, but the denial of Medicaid itself and the imposition of a penalty period leave no recourse for the recipient who is now being held liable; this recipient has no standing to appeal. Let's say a grandmother gives \$30,000 directly to colleges for each of two grandchildren and she does this for two years for a total of \$120,000. She then suffers a severe stroke that requires nursing home level care. The colleges had nothing to do with the Medicaid application and its denial and, therefore, have no standing to appeal through the administrative appeal process.

This act would make a recipient a potential defendant in a lawsuit. There are certainly many gifts given to family members who are out of work, or who need help with extraordinary medical bills or the individual may contribute to a favorite charity or political campaign, still more contribute to their religious organization. There are many reasons people give, often times as they age, and they feel good about helping out, but this act creates an illegal presumption and is overbroad.

Now think of the cases where an individual sells his or her home to a third party, but the Department of Social Services (DSS) alleges that the property was sold for less than fair market value and attaches a penalty period based on the difference between what DSS thinks the home should have sold for and what it actually sold for. DSS has been actively contesting these arms length sales. Under SB104, the nursing home can go after the innocent buyer of the home. This could have quite the unexpected consequence of casting a cloud on the marketability of these transactions and would affect title issues.

EFFECTIVE REMEDIES ARE ALREADY AVAILABLE

Unpaid nursing home bills certainly are a serious matter but the nursing homes have the legal means under both Federal and State law to respond to this situation through the undue hardship rules. Facilities should support the existing hardship rules administered by the Department of Social Services. Successfully seeking a hardship waiver allows Medicaid to pay their bills despite a penalty period due to a gift (the transfer).

In addition, nursing homes currently have a remedy and they are exercising it. They are bringing lawsuits against the party filing the application when this party was responsible for the transfers that may have created a penalty period, and they are succeeding in these suits.